

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY A. FRANK,

Petitioner,

v.

ERIC ARNALD,

Respondent.

Case No. [18-cv-03967-EMC](#)

**ORDER TO STAY AND  
ADMINISTRATIVELY CLOSE THE  
ACTION**

Docket Nos. 1, 6, 8

Anthony A. Frank filed this *pro se* action for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 to challenge his 2015 conviction in the Santa Clara County Superior Court for second degree robbery and shooting into an occupied vehicle. Shortly after he filed his petition, Mr. Frank moved for a stay of these proceedings so that he could exhaust state court remedies for several claims before, if necessary, presenting them in his federal habeas action.

A stay under *Rhines v. Weber*, 544 U.S. 269 (2005), “is only appropriate when the district court determines there was good cause for the petitioner’s failure to exhaust his claims first in state court,” the claims are not meritless, and there are no intentionally dilatory litigation tactics by the petitioner. *Id.* at 277-78.

Mr. Frank has met the criteria for a stay under *Rhines*. He shows good cause for his failure to exhaust his claims before presenting them in this federal habeas action, i.e., he states that his appellate counsel refused to present some of the issues in conjunction with the direct appeal. *See* Docket No. 8 at 2. At least some of the claims in the petition for writ of habeas corpus appear not to be meritless, e.g., the claims for ineffective assistance of trial and appellate counsel. And there do not appear to be any intentionally dilatory litigation tactics by Mr. Frank, as he states that he already has filed his habeas petition in the California Supreme Court. Mr. Frank’s motion for a


1 *Rhines* stay is **GRANTED**. Docket No. 8. Mr. Frank is cautioned that he must act diligently to  
2 pursue his habeas petition in the state courts and must promptly return to federal court after his  
3 state court proceedings conclude. *See Rhines*, 544 U.S. at 277-78.

4 For the foregoing reasons, this action is now **STAYED** and the Clerk shall  
5 **ADMINISTRATIVELY CLOSE** the action. Nothing further will take place in this action until  
6 Mr. Frank exhausts any unexhausted claims and, within thirty days of doing so, moves to reopen  
7 this action, lift the stay and proceed with consideration of his petition for writ of habeas corpus.

8 The application to proceed *in forma pauperis* is **GRANTED**. Docket No. 6.

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10 **IT IS SO ORDERED.**

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12 Dated: September 21, 2018

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15 EDWARD M. CHEN  
16 United States District Judge  
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